

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

March 20, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

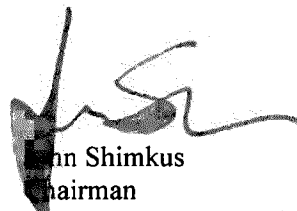
Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Tuesday, February 28, 2012, to testify at the hearing entitled "The FY 2013 EPA Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, April 3, 2012. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Alex.Yergin@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,



Dan Shimkus
Chairman
Subcommittee on Environment
and the Economy

cc: Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power
Gene Green, Ranking Member, Subcommittee on Environment and the Economy

Attachment

The Honorable Ed Whitfield

1. Please provide a list of all grants (excluding US-Canada and US-Mexico border projects) awarded by EPA to foreign entities directly or indirectly since January 2009. Please include in your response the recipient, the amount, and the statutory authority for the grant.
2. How does EPA measure the benefits obtained by the American people through U.S. environmental cooperation with a foreign country, excluding work with Canada and Mexico?
3. Under the Renewable Fuel Standard law, the EPA is required to publish its required volume obligations for certain fuel categories on an annual basis. These volume obligations inform industry stakeholders as to the specific amounts of renewable fuel that must be produced, purchased, blended or imported in order to comply with the program. While the annual volumes required for most fuel categories are established in the statute, the EPA is given some discretion with biomass-based diesel. The EPA is also required to publish such the required volumes 14 months in advance of their compliance year, meaning that volume obligations for biomass-based diesel in 2013 were due in November of 2011. In June of last year, the EPA released a proposed rule which established proposed volumes for 2012 and called for 1.28 billion gallons of biomass-based diesel in 2013. However, when the EPA issued its final rule, it included the 2012 volumes but omitted the 2013 biomass-based diesel volumes.
 - a. Why were the proposed volumes of biomass-based diesel specified in the June 2011 proposed rule omitted from the final rule published in December of last year?
 - b. When does the EPA expect to release these volume obligations so that industry may adjust accordingly?
4. For FY 2013, what is the total amount requested in EPA's budget for climate change related programs and activities?
5. EPA requests a \$2 million increase for the development of New Source Performance Standards that address greenhouse gases. Besides utilities and refineries, what other source categories is EPA considering?
6. What is EPA's current schedule for proposing greenhouse gas New Source Performance Standards for power plants? What is EPA's current schedule for issuing a final rule?
7. What is EPA's current schedule for proposing greenhouse gas New Source Performance Standards for refineries? What is EPA's current schedule for issuing a final rule?
8. What is EPA's current schedule for proposing revisions to National Ambient Air Quality Standards for particulate matter? What is EPA's current schedule for issuing a final rule?
9. For EPA's January 2010 proposed ozone rule, EPA estimated that the costs would be \$19 to \$90 billion annually. What was the estimated total cost of the final rule that was submitted by EPA to the Office of Management and Budget in 2011 but was subsequently withdrawn?
10. What is EPA's current schedule for proposing revisions to National Ambient Air Quality Standards for ground-level ozone? What is EPA's current schedule for issuing a final rule?

11. Please describe EPA’s activities related to methyl bromide and the Montreal Protocol. How does EPA support the needs of U.S. farmers in ensuring they have access to methyl bromide for critical uses? What role does EPA play in the interagency decision-making process related to U.S. farmers and the Montreal Protocol? What activities are planned for fiscal years 2012 and 2013?
12. Please describe the process U.S. farmers use to request methyl bromide. How are the requests reviewed? Has the review process changed over time? Has EPA changed the type, quantity or amount of data required by U.S. farmers? Please describe in detail the information required by the agency.
13. As you may know, the Committee has launched an inquiry into the sale of fraudulent so-called “RINs” (Renewable Identification Numbers), particularly those sold by Clean Green Fuels, under the requirements of the Renewable Fuels Standard in the Clean Air Act. Is it EPA’s position that good faith purchasers that used Clean Green RINs for compliance with the Renewable Fuels Standard are required to “replace” those RINs?
 - a. Does the Clean Air Act itself require victims of fraud to replace invalid RINs?
 - b. Is it EPA’s policy that, in addition to being required to replace fraudulent RINs, obligated parties should be made to pay civil penalties for the use of such RINs – even though the RINs were purchased in good faith? Are such penalties required under the Clean Air Act?
14. During the RFS rulemaking processes, EPA indicated that penalties would not be automatic for good faith purchasers. For example, in the preamble to the RFS regulations, EPA stated that “a penalty for a good faith purchaser is not automatic” and “any penalty for a good faith purchaser would likely be small...” (See 72 Fed. Reg. 23900, 23951 (May 1, 2007).) Similarly, in the preamble for the 2010 rules, EPA stated: “In determining what penalty is appropriate, if any, we would consider a number of factors, including whether the obligated party did in fact procure sufficient valid RINs to cover the deficit created by the invalid RINs, and whether the purchaser was indeed a good faith purchaser based on an investigation of the RIN transfer.” (See 75 Fed. Reg. 14670, 14731 (March 26, 2010)).
 - a. Is EPA taking these factors into account for good faith purchasers before deciding whether to impose penalties?
 - b. If an obligated party was a good faith purchaser and replaced the Clean Green RINs, will it still be subject to penalties? If so, why? What purpose is served by such penalties?
15. Does EPA provide any kind of safe harbor for companies that purchase RINs in good faith, and with a reasonable amount of due diligence? If not, why not? Is that something that Congress should address?

The Honorable John Shimkus

1. EPA’s initial guidance on how to distribute \$15 million in drinking water technical assistance in FY2012 appropriations does not include the Congressional directive to prioritize funding that is most beneficial to small communities. Congress directed the agency to prioritize funding to organizations, “supported by a majority of small community water systems...” This was to ensure small communities would find the program most beneficial.
 - a. Why won’t EPA prioritize this essential funding in this way?

- b. Can EPA implement this directive by asking small water applicants to demonstrate the level of support of small communities?
2. Are you planning to conduct aerial surveys of former phosphate mine sites in Florida?
3. If so, how much money is dedicated in EPA’s budget request for these efforts?
4. You testify that EPA’s proposed budget “continues EPA’s ongoing congressionally directed hydraulic fracturing study” and that this budget requests \$14 million in total to work collaboratively with the United States Geological Survey, the Department of Energy and other partners to assess questions regarding hydraulic fracturing.
 - a. Please explain the purpose of this study.
 - b. Is EPA planning to expand the scope of this study? If so, what new areas does EPA want to address?
 - c. This study is pursuant to Appropriations Committee report language, not statutory direction. Under what statutory authority is EPA expanding this study?
 - d. The original report language places the responsibility for this study on EPA. If EPA is asking for \$14 million, how much is being committed from the budgets of USGS or the Energy Department?
 - e. The original report language asked EPA to work with “appropriate State and interstate regulatory agencies”. Does EPA’s budget request expanding this study take into consideration the participation of the States? If yes, which ones?
 - f. Who are the “other partners” EPA believes are important for inclusion in this study?
 - g. Has any preparatory work been initiated? If so, can you please provide details?
 - h. Who will be the lead Agency?
 - i. How will peer review and stakeholder input be incorporated?
 - j. How is this different from other studies that have already been conducted?
 - k. How does the Administration want to use this study?
5. When EPA does “study” work to assess the risks of something, is it standard for EPA to use Section 104 of CERCLA as its main authority to collect information?
6. You testify that “we must make sure that the ways we extract [natural gas] do not risk the safety of public water supplies.” Please detail examples, if any, of where hydraulic fracturing, per se, contaminated finished water from community water systems, as defined under the Safe Drinking Water Act.
7. EPA has been quite active, across several of its media and regional offices, in looking at hydraulic fracturing as a means of producing natural gas. Is it your desire to have USEPA produce (1) Federal

guidance with regulatory consequences or (2) regulations themselves regarding activities and processes connected to hydraulic fracturing under:

- a. The Safe Drinking Water Act;
 - b. The Toxic Substances Control Act;
 - c. The Clean Air Act;
 - d. The Emergency Planning and Community Right to Know Act;
 - e. The Comprehensive Environmental Response Compensation and Liability Act; or
 - f. Subtitle C of the Solid Waste Disposal Act?
8. If USEPA were to supplant state regulators as the primary regulators of hydraulic fracturing, please state:
 - a. The additional budget authority EPA needs to increase its in-house expertise and expand its programmatic and enforcement reach to carry out these authorities especially, as it relates to:
 - i. chemicals registry and disclosure;
 - ii. underground injection control activities related to well stimulation and waste disposal;
 - iii. routine compliance inspections, whether under CERCLA section 104, RCRA sections 3007 and 3008, SDWA sections 1422 and 1445; and
 - iv. technical assistance with process activities and regulatory compliance
9. The “FY 2013 Activities and Performance Plan” states: “In FY2013, within the resources available, the EPA (where the EPA directly implements) will implement guidance for permitting hydraulic fracturing where diesel fuels are used.”
 - a. Where does EPA “directly implement” guidance?
 - b. Could this activity actually have ramifications beyond where EPA would “directly implement” guidance?
 - c. What is the budgetary range meant by “within the resources available”?
10. In 1988, the U.S. Environmental Protection Agency (EPA) and the Interstate Oil and Gas Compact Commission (IOGCC) began STRONGER -- a non-profit, multi-stakeholder organization whose purpose is to improve both the environmental regulatory universe as well as industry practices associated with the exploration, development and production of crude oil and natural gas. In the past, EPA and the Energy Department have both provided funding for environmental groups, industry, and regulators to these discuss critical issues. At a time when EPA is trying to learn as much as it can about natural gas development, why does the Agency’s proposed budget eliminate funding to STRONGER?

11. Both environmental activists and industry have thoroughly criticized the EPA for lack of transparency in the scientific methodology behind its multi-year water quality study on the impacts of hydraulic fracturing. As a result, millions of dollars are being spent on a report that, like the EPA’s recent investigation into alleged contamination in Pavillion, Wyoming, may not hold up to scrutiny from either side
 - a. What lessons do you plan to take from the Pavillion problems for the larger EPA study on hydraulic fracturing and water?
12. This week, EPA plans to hold two quarterly stakeholder updates – the first on Monday and the second on Tuesday. In its announcement for the Webinar, EPA notes “it is committed to keeping you up-to-date on the study’s progress” and that this is the first in a series of updates to be held in 2012. I understand that each webinar is only an hour long, with EPA making a presentation and allowing some amount of time for questions and answers with call participants.
 - a. Is this the only vehicle for those stakeholders interested in getting far more in depth information on the data gathered by the Agency, analysis finalized, and conclusions at this point in the study?
 - b. Has EPA considered holding a workshop series , similar to the detailed sessions it held in the spring of 2011, in order to spend a more realistic amount of time reviewing the multitude of issues in a multi-million dollar study?
13. What actions is the Agency taking to improve the quality of its data management to assure the credibility of the information it generates will be credible?
14. The hydraulic fracturing studies announced in the Administration’s proposed fiscal year 2013 budget involve multiple agencies addressing the same issues. For each such study:
 - a. What are the specific roles and responsibilities of each agency?
 - b. What management structure will exist?
 - c. What Agency will be the controlling agency?
15. EPA is planning a study on air emissions from oil and natural gas production related to hydraulic fracturing. EPA has proposed a New Source Performance Standard (NSPS) for oil and natural gas production. Based on comments submitted to the docket on this proposal, EPA overestimated emissions from hydraulically fractured natural gas wells by as much as 1400 percent. Why didn’t EPA first initiate a study on air emission before making this faulty estimate?
 - a. In the same NSPS proposal EPA uses emissions factors for vapor from oil storage tanks that is refuted in its own docket support materials. Does the Agency have process to assure that its regulatory proposals make sense?
16. EPA announced that it plans to continue its Effluent Limitation Guideline development for coal bed methane (CBM) produced waters. This effort relies upon: (1) information many consider out of date, (2) economic data based on natural gas prices that are three (3) times current prices, and (3) production information that does not reflect the dramatic drop in coal bed methane production. Since CBM produced water comes at the beginning of the production process, what benefit is it to continue

this ELG action? Please state the estimated costs both to EPA, States, and the private sector to issue, implement, and comply with the ELG?

- a. EPA announced its intent to create an Effluent Limitation Guideline (ELG) for shale gas extraction produced water. What will it cost to develop this ELG?
17. EPA seems concerned that many states do not regulate fracturing under the Safe Drinking Water Act’s Underground Injection Control (UIC) program. Yet, EPA is indicating that permits are required under the UIC program for specific applications of hydraulic fracturing. Entire state UIC primacy delegations and programs could be seriously jeopardized over this specific contradiction. Can EPA withstand challenges to the primacy delegation of the UIC program created by this inherent conflict?
 18. Key aspects of the EPA study are the retrospective and prospective case studies. The EPA has identified five retrospective case studies, which will investigate reported drinking water contamination due to hydraulic fracturing operations at existing sites. These sites are located in North Dakota, Texas, Pennsylvania and Colorado. These retrospective case studies were selected based on where operations have already occurred, but failed to screen out whether potential confounding factors or other issues might interfere with the quality of the data and any reliability of their conclusions. Further, any water contamination issues could have occurred years ago -- and without real investigation of the cause immediately following a reported incident.
 - a. In the interest of ensuring high-quality data and valid scientific study and analyses, please state why EPA is focusing on these retrospective studies instead of on prospective sites?
 19. We understand that EPA has prepared new guidance that will define “diesel fuels” for purposes of regulating hydraulically fractured oil and gas wells under the Underground Injection Control program.
 - a. Does EPA’s guidance adopt the broad definition that was posted in a PowerPoint presentation on EPA’s website last year?
 - b. What is EPA’s justification that Congress intended “diesel fuels” to be broader than just fuels used in diesel engines -- as the plain language of the Energy Policy Act of 2005 clearly contemplated?
 20. EPA’s Office of Civil Enforcement has announced a new “Energy Extraction Enforcement Initiative” using enormously broad authority under CERCLA Section 104 to directly target the natural gas industry from “cradle to grave.”
 - a. How is this consistent with the President’s State of the Union remarks on the potential of shale gas development in this country?
 - b. How many new enforcement actions has the initiative resulted in?
 - c. What are your findings so far about the nature of any violations?
 - d. Why did the EPA seek to launch a new, expensive, litigious approach to top-down enforcement when industry is already policed by multiple state agencies?

21. EPA states that in FY 2013 it needs an increase of \$36.4 million to address existing chemicals that have not been tested for adverse health or environmental effects.
 - a. How many of the chemicals EPA intends to use this requested budgetary increase to study have already had this information provided to the European Chemicals Agency (ECHA) as part of registration and regulatory program known as the Registration, Evaluation, Authorization, and Restriction of Chemical substances (REACH)?
 - b. Of those scientific studies, how many meet Organization for Economic Cooperation and Development (OECD) quality guidelines?
 - c. How many less chemicals would EPA need to assess if it used OECD compliant analyses on overlapping REACH chemicals?
 - d. How much would less would EPA need for this budget request if it used OECD compliant analyses of overlapping REACH chemicals?
22. In FY2012, EPA began a more "integrated research approach." This apparently looks at problems "more systematically and holistically."
 - a. How much money has EPA saved moving to this integrated approach?
 - b. What does EPA think it is gaining from this approach that it did not previously obtain?
23. EPA's budget proposal suggests that EPA needs to regulate chemicals in consumer products. Considering that we have a Federal agency already doing this activity, please cite EPA's authority to regulate consumer products.
24. Your budget plan states that, in fiscal year 2013, the EPA needs an increase of \$36.4 million to transition from a collaborative collection of chemical data with the industry to a more aggressive regulatory tact under the Toxic Substances Control Act (TSCA). Clearly, this request rebuts the argument by some that TSCA is flaccid. Please state all such TSCA authorities the Agency believes will help it:
 - a. take immediate and lasting action to eliminate or reduce identified chemical risks and develop proven safer alternatives;
 - b. fill gaps in exposure data;
 - c. conduct detailed chemical risk assessments on priority chemicals;
 - d. inform and support development and implementation of risk management actions; and
 - e. prevent introduction of unsafe new chemicals into commerce.
25. EPA's fiscal year 2013 budget plan requests an increase in discretionary funding of \$11 million for a program, called "Enhancing Chemical Safety," to initiate, continue, and complete actions to reduce chemical risks; assess chemical risks; and obtain needed information on potentially hazardous chemicals.
 - a. By what authority does the Agency intend to carry out these functions?

- b. Does EPA believe it should approve manufacturing processes, chemicals generated, and resultant products in the United States?
 - c. Please cite the specific statutory authority EPA authority to makes these decisions.
26. Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act provided EPA with its only statutorily granted authority for homeland security related activities – and these were cabined to drinking water protection. The proposed budget recommends \$164.4 million for Chemical Safety and Sustainability, Human Health Risk Assessment, and Homeland Security Research Programs in FY 2013.
- a. How much of that will be used for specific homeland security activities?
 - b. How much of that amount will be dedicated to fund provisions contained in Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act?
 - c. Which other explicitly authorized duties related to homeland security activities are proposed to be funded by this amount?
 - d. Please state which offices at and programs operated by the Department of Homeland Security need EPA's expertise (page 113 of the Congressional Justification).
27. In September 2011, EPA held a stakeholder dialogue on prioritization of chemicals for further evaluation and possible risk management. While this was an important step by the Agency to be more transparent about its prioritization process, it has not made the criteria applied for that process transparent.
- a. Will EPA develop a long-term prioritization process under the Office of Chemical Safety and Pollution Prevention? If so, when?
 - b. Will EPA make its criteria and processes for prioritizing chemicals transparent? If so when?
 - c. In fiscal year 2013, will EPA be proposing or implementing a prioritization and screening process for all chemicals in U.S. commerce? If not, why not?
 - d. Please explain whether, if EPA does engage in longer term prioritization of chemicals in commerce, EPA will engage in dialogue with all stakeholders about this topic.
 - e. What are the most important characteristics for the Agency to include in a comprehensive, long term screening-level prioritization process employed by EPA?
28. When reviewing the newly developed screening battery of test methods for EPA's Endocrine Disruptor Screening Program (EDSP), EPA's Science Advisory Board recommended that, after the initial round of screening is completed, the Agency should analyze the results to determine how well or poorly each of the 11 screening methods has performed, have this analysis undergo scientific peer review, and then make any changes needed in the screening battery before pushing on to screening additional substances.
- a. Considering EDSP screening costs can be more than \$500,000 per substance, and that the results of the first round of screening from EPA's issuance of 67 test orders in 2009 and early

2010 will be completed by August or September, please state whether you plan to follow the SAB recommendation in early FY 2013 before issuing additional endocrine screening test orders? If not, why not?

29. Between 1998 and now, I have been told chemical manufacturers provided EPA screening level data and information on 2,200 high production volume chemicals -- representing more than 95% of all chemicals in commerce today, by volume.
- How has the Agency made use of the high production volume data and information to date?
 - Will the Agency make better use of this data and information to prioritize chemicals for further evaluation and assessment?
30. EPA's budget states that the agency will develop 450 hazard characterizations “using the data obtained through TSCA test rules.” Many high production volume substances have been registered under REACH, the European chemicals management program. In 2010, EPA and the European regulatory authorities entered into a Statement of Intent to share and exchange information concerning hazard and risk assessment of chemical substances.
- Has this EPA- European agreement required further development and elaboration? Has it occurred?
 - What is EPA doing about formalizing that agreement to make full use of the information on high production volume and other substances so as not to waste resources by requiring duplicative information from industry?
31. Has EPA budgeted additional dollars for its Chemical Action Plans under the Toxic Substances Control Act for fiscal year 2013?
- Please explain EPA's intention regarding these Action Plans (i.e. are they continuing or being abandoned for something different)? If so, please explain.
 - Please state whether and for which chemical substances or mixtures EPA intends to issue a chemical action plans in fiscal year 2013.

The Honorable Cathy McMorris Rodgers

- Administrator Jackson, as you know, this past December, Solicitor General Verrilli was asked to obtain and present the position of the federal government as it relates to the Ninth Circuit's 2010 decision in *NEDC v. Brown*. This decision overturned 35 years of EPA policy in treating storm water runoff from forest roads as a point source under the Clean Water Act.

What is or will be the EPA's position and what is the EPA's current policy while the petitions are pending before the Supreme Court?
- Administrator Jackson, what percentage of your budget is being used to analyze the economic impact, including number of jobs created or lost, of the regulations being promulgated by the EPA?

3. In your budget, you indicate that there is a funding increase for hydraulic fracturing? Could you describe in greater detail – what is the basis for the increase? Isn't it premature given the study that's being conducted? And, isn't this duplicative of other agency efforts such as BLM?
4. Administrator Jackson, I would like to follow up on efforts by my colleagues in the Senate to clarify EPA's plans as it relates to financial assurances under Section 108(b) of CERCLA. As you know, financial assurance programs for hard rock mining have been effectively implemented by BLM and USFS in coordination with states. In fact, the Western Governors Association expressed strong opposition to EPA's involvement in this program. Would you confirm EPA's position as it relates to this program and that no funds will be used to implement a future program.

The Honorable Lee Terry

1. The conference report for the Interior/EPA Appropriations bill for FY 2012 included report language expressing concern about the implementation of regional haze rules and directed the agency to work more collaboratively with the states. What have you done as an agency in response to the committee's guidance? It is a concern that so many states continue to face EPA as an adversary instead of a partner in this process.
2. The implementation of regional haze rules has become highly controversial. many states believe that EPA has overstepped its bounds in its disapproval of state implementation plans, despite the fact that these plans that make significant improvements in visibility. In some cases the EPA has proposed alternatives that cost hundreds of millions of dollars for improvements that cannot be detected by the human eye. In this time of tight budgets, these disputes do not seem to be a good use of resources at the agency. Please comment.

The Honorable Michael Burgess

1. Are you familiar with the UN Department of Economic and Social Affairs Division for Sustainable Development's Agenda 21?
 - a. How much money has EPA dedicated to carrying out initiatives aimed at supporting Agenda 21?
 - b. Please identify all programs and initiatives within EPA which support or further the initiatives of Agenda 21.
2. Are you aware of the GAO study currently ongoing regarding Title 42 pay and the administration's misuse of the statute?
 - a. Has anyone from GAO contacted you or anyone else at the EPA?
 - b. Have you reviewed how your agency is using the statute?
 - c. Have you discussed the Title 42 program with anyone at HHS? Have you reviewed their new guidance regarding the program?
3. Have you approached the Energy & Commerce Committee for permanent authority similar to Title 42 for your agency, or do you intend to continue to end-run the committee and receive authority through appropriations bills?

4. When EPA is recruiting people, the use of Title 42 is meant to be used only if the position cannot be filled using Title 5. Your answer to my questions from September of last year suggested you used Title 42 before even attempting to fill positions under Title 5. Is this the case? For each of the positions you have filled using Title 42, please demonstrate for each, individually and separately, the following:
 - a. How you attempted to fill the position using Title 5
 - b. How many applicants applied for the position under Title 5
 - c. If you were unable to fill the position using Title 5, please demonstrate, for each position which was ultimately filled using Title 42, why you were unable to fill that position using Title 5 hiring and pay
5. Your CFO testified before this committee last October that you had a large amount of unobligated funds sitting in your coffers. She made a commitment to this committee that she would work to tighten up those figures and provide us with more transparency. What have you done as Administrator to ensure those funds are being used before you come back to congress asking for more money?
6. You indicated during your testimony that you have not granted a waiver for the existing stock of Primatene Mist to be sold until FDA can approve a similar OTC equivalent of Primatene Mist.
 - a. Have you been approached by any outside groups to grant such a waiver?
 - b. Please provide the legal rationale if you have determined that you will not grant such a waiver. Please include rationale addressing the lack of an equivalent OTC emergency inhaler, as all existing inhalers for asthma require prescriptions.
7. Has EPA contemplated the disposal procedures necessary for dealing with the existing stock of Primatene Mist? Please provide the specific instructions which will be necessary to dispose of the existing stock containing the CFC propellant.
8. Has EPA done any cost-benefit analysis of whether disposing of the existing stock of Primatene Mist will do as much harm to the environment and ozone as allowing the stock to be used for medical purposes, thus gaining the benefit of providing relief to asthmatics?

The Honorable John Sullivan

1. Late last year EPA Region 6 decided to reject Oklahoma's regional haze State Implementation Plan (SIP) in favor of imposing a more stringent and more expensive FIP that would compel Oklahoma utilities to use scrubbers. The frustration experienced by Oklahomans was considerable given that all the state interests had worked hard to develop what they believe is a reasonable, cost effective SIP that specifically makes sense for Oklahoma while still accomplishing the objectives of the regional haze program. Can you explain why it is a more cost-effective approach for EPA to insist on its regional haze FIP that requires the substantially more expensive installation of scrubbers on Oklahoma utility plants rather than approve the Oklahoma SIP? Can EPA's insistence on the far more expensive FIP approach possibly make sense given President Obama's Executive Order 13563 which directs the federal agencies to adopt the more cost-effective approach and to respect alternatives that

come from the states and private sector parties that achieve EPA’s environmental standards on a less burdensome basis?

2. I understand that in its CAIR analysis EPA was asserting that Oklahoma emissions may have been impacting a county in Texas. But in CSAPR-- which replaced CAIR-- EPA has apparently abandoned that claim and instead EPA has now included Oklahoma within CSAPR because of some computer modeling which EPA believes suggests an impact of Oklahoma-generated emissions on a county in Michigan which currently is in attainment status. Does it make sense that EPA initially claimed Oklahoma’s emissions were impacting a Texas county to the south of us under CAIR, but now claims that Oklahoma’s emissions impact a county hundreds of miles to the north in Michigan? Does it make any sense that in claiming that Oklahoma’s emissions impact that lone county in Michigan there is no assertion that those emissions impact any of the presumable hundreds of other counties that lie between Oklahoma and that one county identified in Michigan? How is that reflective of sound science?

The Honorable Charlie Bass

1. The EPA’s proposed 316(b) rule for cooling water intake structures includes two performance based impingement compliance options – allowing for no alternatives if the standards are unachievable or unwarranted at particular sites. It would seem to me that it would be better for power plants to be regulated through site-specific analysis and with proper use of cost-benefit analysis and genuine flexibility in technology choice, instead of the rigid approach set out in the proposed rule. Given that there is bipartisan concern that the proposed impingement provisions will impose unnecessary costs without resulting in commensurate benefits, will the Agency set aside its one-size-fits-all approach and allow for site-specific analysis?
2. EPA recently put in place a third-party certification regime for products in order to participate in the ENERGY STAR program. Some industries, such as consumer electronics, believe this was neither necessary nor justified based on their track record of compliance. As a result of EPA’s third-party certification system, these industries are concerned that the ENERGY STAR product qualification process is now more costly and time-consuming to manufacturers, especially for smaller companies. Recognizing the concerns raised in the GAO’s report on ENERGY STAR, is it EPA’s belief that the only answer is to install a one-size-fits-all third-party certification system, or were other options considered to provide the necessary oversight for a program that has a long record of success without third-party certification?
3. It is my understanding that EPA is attempting to broaden the scope of the ENERGY STAR program to cover factors which are not related to the energy efficiency of the product itself such as EPA’s proposed specifications for computers, displays and televisions. Concern has been expressed to me that by including non-energy factors such as emissions, toxicity and recycling in the ENERGY STAR program, EPA is duplicating the private sector’s existing EPEAT eco-labeling program, which EPA actually helped to fund several years ago. Are these new proposals duplicative or related to the actual energy efficiency of a product?

The Honorable Joe Barton

1. Please provide your travel budget for each of the past 3 years.

2. Please provide a list of all of your travel, both foreign and domestic, since January 2009. For each trip, please include the:
 - a. Dates;
 - b. Destination;
 - c. General purpose;
 - d. Total costs for your travel (including airfare and accommodations); and
 - e. All persons accompanying you on the trip.
3. Is EPA funding research grants to individuals or to institutions that employ individuals who serve on EPA’s advisory or review committees? If yes, what are EPA’s policies and requirements concerning the funding of individuals or institutions that employ individuals who serve on its advisory or review committees?

The Honorable David McKinley

1. The U.S. District Court for the District of Columbia ruled on Oct. 6 in *National Mining Association v. Jackson* that it is incumbent upon the Corps to ensure that Clean Water Act permits are issued in a timely manner and without impermissible interference from EPA. What efforts are EPA and the Corps undertaking to ensure compliance and consistent implementation of the court’s decision?
2. The Corps’ own data indicates that there are still 130 individual and general permits pending in the four districts alone, with only 21 of those in the “final review stage.” What progress has been made by the EPA since the Court decision to issue these permits in a timely manner?
3. In *NMA v. Jackson* the Court ruled that the Enhanced Coordination Procedures developed by the EPA and the Corps unlawfully changed the permitting process for Section 404 coal mine permits under the Clean Water Act. In light of this decision, how can we ensure that current and future guidance documents do not become rules themselves without affording stakeholders the procedural protections under the Administrative Procedure Act?

The Honorable Mike Pompeo

1. Administrator Jackson, it is my understanding that the Environmental Protection Agency is a participating Federal Agency in the Areawide Environmental Impact Statement (AEIS) for phosphate mining. As you know it is essential that this AEIS process stay on track so that these important mining jobs stay in the United States. In addition, phosphate is a critical mineral used by farmers in my district to grow crops. Maintaining a domestic supply of these products will ensure that farmers will continue to have access at a reasonable cost. Can you give me a status on EPA involvement in this process?

On January 26, 2012 the US Army Corps of Engineers (USACE) held a briefing for Federal, state and local participating agencies. Was there EPA headquarters involvement in that briefing or are these issues being handled solely by the EPA Regional Office?

Originally, the proposed schedule had a draft AEIS in March 2012, a Notice of Availability of the Final AEIS in August of 2012 and a Record of Decision (ROD) by the end of 2012. Now the new schedule includes a draft AEIS in June 2012, a final AEIS in November 2012 and no date yet released for the ROD. Are you committed to working with the USACE to ensure that this process remains on schedule and there are no more slippages?

The Honorable Tim Murphy

1. I have been consistent in asking EPA for a list of U.S. EPA's concerns with Pennsylvania's oil and gas regulation and associated environmental laws, but have yet to receive anything back from the Agency. You testified that you would get back to me about the Agency's views on Pennsylvania's Act 13, and any other issues related to the state's oversight of oil and gas production. I would appreciate your response to that question as well as an interim response telling me when I can expect a final response.
2. On February 13, 2012, the Pittsburgh Post-Gazette reported that the Agency was undertaking a "'multi-media' investigation of air, water, and hazardous materials impacts" of natural gas development in Washington County, and that its investigation could lead to enforcement actions. I asked you if any of the EPA employees who are working on this investigation, as well as the FY10 congressionally-directed study included petroleum engineers. You were going to get back to me. Are any Agency employees, working on investigating the oil and gas production activities in Pennsylvania, in fact petroleum engineers?
3. Please provide all information and documentation suggesting that the Pennsylvania DEP has failed to act upon proper enforcement necessitating the EPA undertake a "multi-media" investigative study.
4. Was the hydraulic fracturing study being performed by the Agency "mandated" by Congress? If so, what statute does it amend? Does the Agency consider report language, as opposed to statutory language, legally binding?
5. The FY10 congressionally-directed study referenced HF and water quality. Please define the authority and source of funds being used to expand the study to include air quality and ecosystems.

The Honorable Mary Bono Mack

1. Particularly during these difficult economic times, Congressional oversight of federal spending is critical.

As you know, the President's budget request for the EPA is \$8.344 billion, which is approximately 1.2 percent below fiscal year 2012. My sense is that -- particularly with a \$15.5 trillion debt -- shouldn't we be talking about much larger cuts in federal spending than just one percent?
2. I'd like to ask about the Agency's regulations. While I believe many of the EPA's actions are in good faith, I'd like to emphasize the importance that regulations be balanced -- meaning they must consider the health benefits AND the impact on jobs and the economy -- and completely understood by the regulators who publicly promulgate regulations they intend to enforce.

Take for instance the Chemical Data Reporting Rule, published in the Federal Register as a final regulation by the EPA on August 16, 2011. This rule mandates reporting of various types of information from manufacturers. It is expected to provide the Agency more information, on more

chemicals in U.S. commerce, than ever before. This rule will bring the Agency a lot of new information to help it understand the potential impacts and/or benefits of chemicals, but complying with this new rule is no trivial matter. I have a few questions about the implementation process.

- a. We have heard that the regulated community does not have a firm understanding of the new Chemical Data Reporting requirements, and adequate time to fully comply with this rule. As of 5 weeks ago, EPA had not responded to all questions from stakeholders, or provided additional guidance and clarifications, particularly on byproducts reporting under this rule. Has EPA responded to all the questions from stakeholders, or provided additional guidance and promised clarifications, especially on byproducts reporting under this rule? Since compliance, or rather EPA actually getting useful information is the goal, what evidence do you have that the regulated community understands the new reporting requirements?
- b. In the final rule, with its expanded reporting requirement, EPA shortened the timeframe in which industry must prepare the reports for 2011 by three months. Instead of being given six to nine months to prepare the reports, EPA has provided only one to six months between the last day of collection and the submission deadline. Since reporting was mandated to begin four weeks ago, if the Agency is aware that there are still compliance questions, would they consider extending the reporting submission period to September 30, 2012 to be consistent with future reporting periods as well as allow submitters adequate time to fully comply with the new requirements?
- c. Is the e-CDRweb electronic reporting tool fully operational? Has the Agency tested the electronic reporting tool? Is there a beta-version of the tool? What changes have been made to the tool on the basis of stakeholder input?

The Honorable Elliot L. Engel

1. Administrator Jackson: As you know, in accord with the Federal Long Term 2 Surface Water Treatment Rule, the Environmental Protection Agency sought to have New York City to build a concrete cover over the Hillview Reservoir in Yonkers. I was one of several members of the New York Delegation that wrote to you urging a waiver of the regulation as it applies to Hillview. EPA subsequently agreed to initiate a review process for the regulation requiring covers on reservoirs such as Hillview. Please provide me with an update on the status of that review process. Thank you for your responsiveness to date, and I look forward to continuing to work with you on this and many other issues.